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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,510	11/20/2003	Alan S. Reitz	P69265US0	5624
7590	06/30/2005		EXAMINER	
JACOBSON HOLMAN PROFESSIONAL LIMITED LIABILITY COMPANY 400 SEVENTH STREET, N. W. WASHINGTON, DC 20004			AMERSON, LORI BAKER	
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 06/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/716,510	REITZ ET AL.	
	Examiner	Art Unit	
	L Amerson	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
 THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 04 April 2005.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-9 and 21-24 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) 1-9, 21 and 22 is/are allowed.
 6) Claim(s) 23 is/are rejected.
 7) Claim(s) 24 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 20 November 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 · Paper No(s)/Mail Date _____.
 4) Interview Summary (PTO-413)
 · Paper No(s)/Mail Date. _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: Figure 8-Garland.

Response to Amendment

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Garland.

Garland discloses exercise chair comprising an upstanding front support pivotal about a transverse axis at lower end thereof, upstanding rigid rear support, a supporting arm having seat supported therefrom, first pivot connecting a forward end of said arm to the upper end of said front pivotal support, a seat back connected to a rearward end of said arm by a second pivot, and a third pivot connecting the upper end of said rigid rear support and said seat back, said third pivot located at position spaced above said second pivot (see annotations on Figure 8). Regarding the language "to vary the force seat and seat back between upright and reclined positions when exerting a rearward force on said seat back and to move said arm and seat forwardly about the second pivot and to pivot upper end of said front support about the transverse axis lower end, with relaxation of said force enabling an occupant's weight on the seat an upright position return said seat and seat back to an upright position" has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. Garland discloses all of the limitations of the claimed invention except for the third pivot being adjustable. It would have been obvious to one having ordinary skill in

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the art at the time the invention was made to modify Garland such that adjustability of an element provides greater range for the device. Adjustability, where desirable, is a modification that is within the skill of the art. In re Stevens, 212 F.2d 197, 101 USPQ 284 (CCPA 1954).

Conclusion

3. Claim 24 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 1-9 and 21-22 are allowed.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to L Amerson whose telephone number is (571) 272-4971. The examiner can normally be reached on Mon.-Fri from 9-6 p.m. Interviews Tue. And Thur.. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



L. Amerson

